IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 459 of 1992

For Approval and Signature:

Hon'ble MR.JUSTICE J.M.PANCHAL
and
Hon'ble MR.JUSTICE D.P.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

RATHOD RAMESH OGHAD VAGHARI

Versus

STATE OF GUJARAT

Appearance:
MR BS SUPEHIA for Petitioner
MR KC SHAH, A.P.P. for Respondent.

CORAM : MR.JUSTICE J.M.PANCHAL
and
MR.JUSTICE D.P.BUCH

Date of decision: 22/03/2001

ORAL JUDGEMENT

(Per : MR.JUSTICE J.M.PANCHAL)

The appellant, who is convicted under sections 302 & 498(A) of the Indian Penal Code for commission of murder of his wife as well as subjecting her to cruelty and sentenced to imprisonment for life by the learned Sessions Judge, Jamnagar, in Sessions Case No. 104/91 vide judgment dated September 28, 1992, has approached this Court by way of filing present appeal under section 374(2) of the Code of Criminal Procedure, 1973.

2. Deceased Jashuben was married to the appellant and had given birth to three children during subsistence of the marriage. She was staying with the appellant and her children at village Derachhikari, Taluka : Lalpur, District : Jamnagar. On or about August 8, 1991, the appellant had beaten the deceased after consuming liquor because the appellant had suspicion that the deceased had illicit relations with one Govubha Bhikhubha. As the deceased had apprehended further harm to her person, she had left matrimonial home and lodged a complaint with Women Protection Cell, Jamnagar on August 12, 1991. Pursuant to the complaint filed by the deceased, the appellant was summoned by P.S.I. of the said Cell. It was suggested to the deceased that she could be lodged at Vikas Gruh, but the deceased had spurned the said suggestion on the ground that she had to lookafter three young children. Thereafter with intervention of P.S.I. of Women Protection Cell, a compromise was arrived at between the appellant and the deceased and the deceased had gone to stay with the appellant. The incident in question took place on August 14, 1991. On the day of the incident, mother-in-law of the deceased, who is staying in a separate hut situated just near the house of the appellant, had gone to Wadi of one Tabubapu for doing some work; whereas the appellant had gone out for the purpose of getting a letter dictated through someone and the appellant was all alone in the house of the appellant. The deceased had gone to the hut of her mother-in-law to bring some vegetables. Meanwhile,the appellant had come back and alleged that the deceased had entered the hut of his mother for the purpose of commission of theft and had caused injury on back of the deceased by throwing a stone. Thereafter the appellant had thrown the deceased on ground and emptied on her kerosene from one red coloured tin lying in hut and set the deceased on fire. On shouts being raised, the appellant had run away, but Hiraben Nagji, Shamuben and others, who were residing nearby, had come to the place where the deceased was burning and extinguished the fire. Thereafter one Jorubha Bhikhubha and Manubha Maharaj had placed the deceased in a rickshaw and brought her to

Irvin Hospital, Jamnagar. At Irvin Hospital, the deceased had stated before Dr. Hasmukh V. Chavda that she was burnt by the appellant. After preparation of medical papers, the deceased was referred to the Ward of Dr. Shukla by Dr. Chavda. At the said Ward, Dr. Gupta was on duty and Dr. Chavda was also with the deceased. Dr. Gupta found the deceased fully conscious and, therefore, recorded history of assault as narrated by the deceased on page no.2 of the medical papers. Meanwhile, senior doctor Mr. Keyur Rathod had also joined Dr. Gupta in treating the deceased and he had also noted down the history of assault as narrated by the deceased. Thereafter necessary information was conveyed about the incident at Jamnagar City 'B' Division Police Station and investigation was entrusted to Mr. P.N. Solanki, who was then P.S.I. City 'B' Division Police Station, Jamnagar. Mr. Solanki had gone to the Hospital and recorded complaint of the deceased, which is produced at Exh.27 on the record of the case. Initially offences punishable under sections 307 & 323 I.P.C. were registered. At about 1.55 P.M., Head Constable on duty at Irvain Hospital, had sent Yadi to Mr. I.P.Chavda, who was Executive Magistrate in the Office of City Mamlatdar, Jamnagar and requested him to record dying declaration of the deceased. On receipt of yadi, the Executive Magistrate had made necessary endorsements on yadi regarding date of yadi and time at which it was received and had gone to Irvin Hospital for the purpose of recording dying declaration of the deceased. The Executive Magistrate had met Dr. Hasmukh Chavda, who was on duty and had introduced himself as well as acquainted the Doctor with the purpose for which he had come to the Hospital. Dr. Chavda had taken the Executive Magistrate near the cot where the deceased was being treated. The doctor questioned the deceased to ascertain as to whether she was conscious and after being satisfied that the deceased was in a position to speak, issued a certificate to Executive Magistrate Mr.Chavda and informed him that as the deceased was in a position to speak, her dying declaration could be recorded. Thereafter the doctor left the place and the Executive Magistrate recorded dying declaration of the deceased, which is produced at Exh.21 on record of the case. During the course of treatment, deceased expired on August 15, 1991 at about 8.15 A.M. and, therefore, offence punishable under section 302 I.P.C. was registered. After necessary investigation, the appellant was chargesheeted for the offences punishable under sections 302 & 498(A) of the Indian Penal Code. As the offence punishable under section 302 I.P.C. is exclusively triable by a Court of Sessions, the case was committed to Sessions Court,

Jamnagar for trial, where it was numbered as Sessions Case No. 104/91. The learned Sessions Judge, Jamnagar had framed charge at Exh.2 against the appellant for the offences punishable under sections 302 & 498(A) of the Indian Penal Code. The charge was read over and explained to the appellant, who pleaded not guilty to the same and claimed to be tried. The prosecution, therefore, examined (1) Ratilal Chakubhai as P.W.1 at Exh.5, (2) Shamben Valjibhai as P.W.2 at Exh.7, (3) Hiraben Manji as P.W.3 at Exh.8, (4) Parvatiben Jivan Karshan as P.W.4 at Exh.9, (5) Amad Jumabhai as P.W.5 at Exh.10, (6) Gandu Punja as P.W.6 at Exh.12, (7) Dr. Hasmukhbhai P.Devmurari (who examined the appellant for burn injuries sustained by him) as P.W.7 at Exh.15, (8) Dr. Dineshchandra A.Parmar (who had performed autopsy on the dead body of the deceased) as P.W.8 at Exh.18, (9) Dr. Indrajit P. Chavda as P.W.9 at Exh.20, (10) Kalubhai Doshabhai as P.W. 10 at Exh.22, (11) Rameshkumar Nathubhai as P.W.11 at Exh.23, (12) Mr. P.N.Solanki (who had recorded the complaint of the deceased) as P.W. 12 at Exh.26, (13) Binduben Jekab Pravasi as P.W.13 at Exh.32, (14) Dr. Hasmukh V.Chavda as P.W.14 at Exh.35, (15) Kalubhai M. Varu as P.W.15 at Ex.40, (16) Dr. Jayprakash D.Gupta as P.W.16 at Exh.45, and (17) Dr. Keyur P. Rathod as P.W.17 at Exh.46, and also produced documentary evidence, such as complaint filed by the deceased before P.S.I. Women Protection Cell, Jamnagar regarding cruelty meted out to her by the appellant, dying declaration of the deceased recorded by the Executive Magistrate, medical papers wherein history of assault as stated by the deceased was noted by the doctors who had treated the deceased, complaint filed by the deceased, postmortem notes of the deceased etc. to prove its case against the appellant. After recording of evidence of prosecution witnesses was over, the learned Judge recorded statement of the appellant under section 313 of the Code of Criminal Procedure. In his statement under section 313, the appellant denied his involvement in the offences and stated that the case against him was a false one. However, the appellant did not examine any witness in support of his defence.

3. On appreciation of evidence, the learned Judge held that the deceased had sustained burn injuries which were sufficient in the ordinary course of nature to cause her death. The learned Judge noticed that the neighbours and father of the deceased had turned hostile to the prosecution, but referred to different dying declarations both- oral as well as documentary made by the deceased and held that the dying declarations made by the deceased were free from embellishment and reliable. The learned

Judge also relied upon the evidence of witness Binduben Pravasi and the complaint lodged by the deceased with Binduben for concluding that the appellant had subjected the deceased to cruelty. In view of the above referred to conclusions, the learned Judge convicted the appellant under sections 302 & 498(A) of the Indian Penal Code and sentenced him to imprisonment for life by judgment dated April 23, 1992, giving rise to the present appeal.

4. Mr. B.S.Supehia, learned counsel for the appellant after taking us through the entire evidence on record submitted that the deceased died either an accidental death or a suicidal death, but not a homicidal death and, therefore, the impugned judgment should be set aside. The learned counsel extensively referred to the testimonies of neighbours as well as father of the deceased and pleaded that at the first available opportunity the deceased had not stated before the neighbours that the appellant had poured kerosene on her and had set her on fire and, therefore, subsequent dying declarations should not have been acted upon, as they did not inspire confidence. According to the learned counsel, the Doctor had noted down the history of assault on deceased and the Executive Magistrate had recorded dying declaration as well as the police officer had recorded First Information Report of the deceased at the instance of Jorubha Bhikhubha and Manubha Maharaj, who had brought the deceased at Irvin Hospital in a rickshaw and as tutored version is presented in the dying declarations of the deceased,the same should be discarded. On reference to medical papers it was urged by the learned counsel for the appellant that the deceased had sustained 100% burns of 3rd degree and would not have been in a position to make any statement and, therefore, the dying declarations being untrue, should not have been acted upon by the learned Judge of the Trial Court. The learned counsel referred to medical evidence of Dr. H.V.Davemurari and urged that the appellant had sustained burn injuries while trying to extinguish fire on the deceased which shows love and affection of the appellant for the deceased and, therefore, the prosecution case should be disbelieved. What was claimed was that as the deceased had illicit relations with Govubha Bhikhubha, which were objected to by the appellant, the appellant was falsely implicated in the case and, therefore, the appeal should be accepted.

5. Mr.K.C.Shah, learned counsel for the State submitted that the cross-examination of the neighbours and father of the deceased by the prosecution would indicate that they had not supported the prosecution case

because of some compromise arrived at between the appellant and the father of the deceased, but the evidence of those hostile witnesses does not affect in any manner the evidentiary value of dying declarations which are truly and correctly recorded by the medical officers, Executive Magistrate and the Police Officer and, therefore, the learned Trial Judge was justified in convicting the appellant under sections 302 and 498-A of the Indian Penal Code. The learned counsel for the State emphasized that no enmity or ill-motive was even suggested to any of the medical officers or the Executive Magistrate or the police officer and as these independent witnesses had no reason to implicate the appellant falsely in a serious case, the learned Judge did not commit any error in placing reliance on dying declarations recorded by these witnesses. The learned A.P.P. after referring to the evidence on record contended that nothing has been elicited in the cross examination of the witnesses as to who Govubha Bhikhubha was and, therefore, it was wrong to contend that the deceased had involved the appellant falsely because her relations with Govubha Bhikhubha were objected to by the appellant. After referring to the well settled law on dying declaration and deposition of witness Binduben, the learned counsel for the State asserted that the appellant was rightly convicted under sections 302 & 498(A) of the Indian Penal Code for commission of murder as well as subjecting the deceased to cruelty and the appeal should be dismissed.

6. We have heard the learned counsel for the parties and taken into consideration the evidence on record. In this case, prosecution does not claim that the incident in question was witnessed by any one,but has relied upon as many as five dying declarations made by the deceased for the purpose of proving its case against the appellant. Before appreciating the evidence of the witnesses and the contents of dying declarations, it would be relevant to notice the law relating to dying declaration. Section 32(1) of the Indian Evidence Act, 1872 is an exception to the general rule that hearsay evidence is not admissible evidence and unless evidence is tested by cross-examination, it is not credit worthy. Under section 32 when a statement is made by a person as to the cause of death or as to any of the circumstances which results in his death, in cases in which the cause of that person's death comes into question, such a statement, oral or in writing made by the deceased to the witness is a relevant fact and is admissible in evidence. The statement made by the deceased, called the dying declaration, falls in that category provided it has been

made by the deceased while in a fit mental condition. It is well settled that conviction can be based on the dying declaration itself provided it is found to be satisfactory and reliable. The dying declaration made by a person on the verge of his death has a special sanctity, as at that solemn moment, a person is most unlikely to make any untrue statement. The sanctity attached to dying declaration is that a person on the verge of death would not commit sin of implicating somebody falsely. The shadow of impending death is by itself the guarantee of truth of the statement made by the deceased regarding cause or circumstances leading to his death. The general principle on which this species of evidence is admitted is that they are declarations made in extremity, when the person is at the point of death and when every hope of this world is gone. At that point of time, every motive to falsehood is silenced and the mind is induced by the most powerful consideration to speak the truth. Such a solemn situation is considered by the law as creating an obligation equal to that which as imposed by a positive oath administered in a Court of justice and a dying declaration, therefore, enjoys almost a sacrosanct status as a piece of evidence coming as it does from the mouth of deceased victim. Once the statement of dying person and the evidence of witnesses testifying the same passes the test of careful scrutiny of the Courts, it becomes very important and reliable piece of evidence and if the Court is satisfied that the dying declaration is true and free from embellishment such a dying declaration by itself can be sufficient for recording conviction even without looking for any corroboration. However, if there are any infirmities of such nature warranting further assurance then the Court will have to look for corroboration. The rule of corroboration requires that dying declaration should be subjected to close scrutiny, since the evidence is untested by cross-examination. The declaration must be accepted unless such declaration can be shown not to have been made in expectation of death or to be otherwise unreliable. Any evidence adduced for this purpose can only detract from its value, but does not affect its admissibility. It is also well settled that it is not necessary that recording of dying declaration should be only in the form of question and answer. The person making dying declaration need not make elaborate and exhaustive statement as to cover each and every aspect of the incident, more so, where the deceased-declarant was at that time, suffering from high degree of burns and was under severe stress and agony. One of the important tests of reliability of dying declaration is that the person who recorded, it must be satisfied that the

deceased was in a fit state of mind. Generally following three tests have been devised in judicial pronouncements in order to answer the question whether the dying declaration is true:- (1) was the victim in a position to identify the assailant/s ? (2) whether the version narrated by the victim is intrinsically sound and accords with probabilities ? (3) whether any material part is proved to be false by other reliable evidence ?

7. In the light of above referred to principles, we will now consider the evidence on record. The evidence of witness Ratilal Chakubhai, Shamben Valjibhai, Hiraben Nanji, Parvatiben Jivan Karshan etc. who are neighbours shows that they have not supported the prosecution case and were treated hostile to the prosecution. However,all the above referred to witnesses were contradicted with their previous statements recorded during the course of investigation and, therefore, the claim made by these witnesses in their examination-in-chief to the effect that the deceased had not informed them that the appellant had poured kerosene on her and had set her on fire, cannot be accepted. Similarly, witness Gandu Punja, who is father of the deceased and who was examined to prove case against the appellant under section 498(A) of the Code, has also not supported the prosecution case, but he too was confronted with his previous police statement and, therefore, claim made by him in his examination-in-chief that relations between the deceased and the appellant were cordial and that the appellant had not subjected the deceased to cruelty, cannot be accepted. Though it is not proved, the suggestion made by the prosecution to the witnesses was that they had not supported the case of prosecution because a compromise was arrived at between the appellant and the father of the deceased. Even if the said suggestion is discarded, the best that can be said is that the evidence of these witnesses does not prove the case of prosecution against the appellant for the offences punishable under sections 302 & 498(A) of I.P.C., but the evidence of these witnesses would not detract, in any manner, the evidentiary value of dying declarations, if they are otherwise found to be true and reliable.

8. Coming to the dying declarations, we find that after being admitted to Irvain Hospital, Jamnagar, Dr. Hasmukhbhai Chavda, P.W.14, Exh.35 had treated the deceased. The doctor in his examination-in-chief stated that the deceased was admitted in the hospital for treatment of her burn injuries and he had made preliminary inquiry and recorded the history of burn injuries given by the deceased as she was conscious. The

doctor has produced medical papers at Exh.37, wherein history of assault was recorded as under :-

"H/o burns done by her husband at her home at about 10.00 A.M. today."

This witness has been cross-examined searchingly on behalf of the appellant, but nothing was elicited to doubt his claim made in examination-in-chief to the effect that the deceased was fully conscious and that he had recorded the history of assault as narrated by her. Further this witness has stated that the deceased was referred to Ward of Dr. Shukla where the deceased was treated by Dr. Gupta and Dr. Keyur Rathod. This claim of Dr. Hasmukh Chavda stands amply corroborated by the testimony of Dr.Jayprakash Gupta and Dr. Keyur Rathod. Regarding dying declaration recorded by Dr. Gupta, we find that Dr. Jayprakash Gupta, P.W.16 at Exh.45 has stated in his evidence that when he was on duty at Casualty Ward of Irvin Hospital on August 14, 1991, the deceased was brought to the Ward by the appellant and on inquiry being made, she had informed him that her husband had set her on fire in the house at about 10.00 A.M. Dr. Gupta has further deposed that at the time when the above referred to statement was made, the deceased was fully conscious and her husband was also present. In cross-examination, the witness denied the suggestion made by the defence that the deceased was talking haltingly and that he had collected the information about the incident from other Darbars, who were present there. The witness explained in his cross-examination that the meaning of short form "H.B." mentioned in medical case papers produced at Exh.37 was "History by self" i.e. history was given by the deceased herself. Thus, the evidence of Dr. Gupta, which is supported by contemporary medical record, also proves oral dying declaration made by the deceased before him. The testimony of Dr. Keyur Rathod, who was examined as P.W.17 at Exh.46 indicates that on August 14, 1991 he was discharging duties in Female Ward of Surgical Department at Irvin Hospital and the deceased was admitted in the Ward of Dr. Shukla at about 12.35 noon. According to this witness, he had examined the deceased at 12.40 noon and on inquiry being made,she had informed him that she was set ablaze by her husband Rameshbhai because of long standing family disputes. According to this witness, the deceased also informed him that the disputes had taken place with her husband since 5-6 days of the date of the incident. The witness asserted before the Court that at the time when the deceased informed him that she was set ablaze by her husband, she was fully conscious and

neither she had convulsion, nor was she vomiting. The Doctor has stated that the history given by the deceased was noted down by him in medical papers. The history noted down by Dr. Rathod produced on record reads as under :-

"History noted by Senior Resident Dr. Keyur Rathod. Patient brought by her husband Rameshbhai. H/o. Burns all over body today morning at 9.00 A.M. by her husband at home at Derachhikari Gau. Patient is telling that she was burnt by her husband. Patient has some family problems with her husband since long time. Since 5-7 days she had quarrel with husband for some reason. She was beaten by her husband and today morning she was burnt by her husband as she says. No history of unconsciousness, convulsion, vomiting. No history of external injury over body at present,except burns."

This witness was also searchingly cross-examined by the defence. In his cross-examination, the witness denied the suggestion made by the defence that the deceased was not in a position to speak anything. The witness also denied the suggestion that he had noted down the history of assault not as narrated by the deceased, but as narrated by two Darbars who had accompanied the deceased. The evidence of Dr.Rathod read with history of assault noted down by him in the medical papers would indicate that the deceased had also made oral dying declaration before this doctor implicating the present appellant. We notice that the evidence of Dr. Hasmukh Chavda, Dr. Jayprakash Gupta and Dr. Keyur Rathod is corroborated by contemporary evidence, viz. notes made at the relevant time in the medical papers and there is no reason to disbelieve the testimonies of these medical officers on oath before Court. Again, the evidence of witness Parbatsinh Solanki, P.W. 12 at Exh.26 would indicate that on receipt of information from P.S.O. of Jamnagar City 'B' Division Police Station, the witness had gone to Irvin Hospital and had recorded the complaint as stated by the deceased herself. The witness has maintained before Court that at the time of narrating the complaint, the deceased was fully conscious and was able to understand the questions which were put to her. The witness has further informed the Court that after the complaint as given by the deceased was reduced to writing, thumb impression of the deceased was obtained thereon. The witness has produced complaint of the deceased at Exh.27. In Exh.27 the deceased had stated that when she had entered house of her mother-in-law for

the purpose of bringing vegetables,the appellant had come and alleged that she had entered house of her mother-in-law for the purpose of commission of theft and saying so, had thrown a stone which had hit her back and thereafter, after throwing her on ground, the appellant had poured kerosene on her from a red coloured tin and set her ablaze. Witness Solanki who was P.S.I. City 'B' Division Police Station, Jamnagar and who had recorded the complaint of the deceased,was cross-examined by the defence at length. The witness denied the suggestion of the defence that at the time when he had recorded the complaint of the deceased, she was wreathing in pain and was not in a position to dictate the complaint. He also denied the suggestion that he had recorded the complaint of the deceased as stated by persons who had accompanied her. The evidence of witness Solanki would indicate that he had recorded complaint of the deceased as narrated by her and at the time when the complaint was recorded, the deceased was fully conscious. Further the evidence of this witness makes it clear that while the complaint was being dictated, no relatives of the deceased were present. In MUNNU AND ANOTHER v. STATE OF MADHYA PRADESH, A.I.R. 1976 S.C. 2199, the Supreme Court has ruled that where after making statement before the police, the victim succumbs to his injuries, the statement can be treated as a dying declaration and is admissible in evidence under section 32(1) of the Act. Therefore, the F.I.R. recorded by witness Solanki as stated by the deceased, will have to be treated as her dying declaration and is admissible in evidence under section 32(1) of the Act. This dying declaration also makes it manifest that it was the appellant who had set the deceased on fire at his house on the date of incident. The evidence of witness Indrajit P. Chavda, P.W.9 at Exh.20 would indicate that on August 14, 1991 he was discharging duties as Executive Magistrate in the office of City Mamlatdar, Jamnagar and had received a Yadi at about 13.55 hours on that day whereby he was requested to record the dying declaration of the deceased. According to this witness, on receipt of yadi, he had made necessary endorsement and had reached Irvin Hospital within 2 to 3 minutes and had visited Ward of Dr. Shukla. The witness has stated before Court that he had met Dr. Hasmukh Chavda who was on duty and after introducing himself, had informed the doctor about the purpose of his visit to the Hospital. The witness has maintained that the doctor had taken him to Bed No.30 of Surgical Ward where the deceased was being treated and the doctor had made preliminary inquiry to ascertain whether she was conscious or not. According to this witness, after making preliminary inquiry, the doctor had

informed him that the deceased was conscious and was able to make statement. The witness informed the Court that the doctor had made endorsement on yadi to the effect that the deceased was conscious and capable of making statement. This witness has stated before the Court that after issuing certificate to the effect that the deceased was conscious, the doctor had left the Ward and after giving his introduction, he had recorded the dying declaration of the deceased. The witness has maintained before the Court that the deceased was able to understand the questions which were put to her and was giving answers after understanding the same. The witness has claimed that after her dying declaration was recorded,he had obtained right hand thumb impression of the deceased on the statement. The witness produced dying declaration of the deceased at Exh.21. A bare perusal of Exh.21 makes it evident that the deceased had stated before the Executive Magistrate that when she had entered the hut of her mother-in-law for the purpose of bringing vegetables, the appellant had come there and alleged her that she had entered the house for the purpose of committing theft and had thrown a stone which had hit her back,after which she was thrown on the ground and thereafter the appellant had poured kerosene over her body and set her ablaze. The Executive Magistrate was also searchingly cross-examined on behalf of the defence. The Executive Magistrate denied the suggestion made by the defence that the deceased was not conscious at the time when her dying declaration was recorded. In cross-examination, the Executive Magistrate maintained that when dying declaration of the deceased was recorded, no one was present. The witness further denied the suggestion made by the defence that the deceased was not in a position to speak anything and that he had recorded dying declaration of the deceased as stated by Darbars, who had brought the deceased to the Hospital. The evidence of Executive Magistrate would indicate that he had recorded dying declaration of the deceased as stated by her and the appellant was present, who had set the deceased on fire.

9. On going through five dying declarations which are on record of the case, we find that they were recorded as stated by the deceased. At the time when the dying declarations were recorded, the deceased was fully conscious and her mental faculties were not impaired at all. Moreover, when the dying declarations were being made, no relative of the deceased was present and she had no reason to implicate the appellant falsely with whom she had gone to reside some few days prior to the date of the incident after lodging complaint with Women Protection Cell, Jamnagar. The evidence on record does

not even remotely indicate that any tutored version of the incident was given by the deceased to the witnesses who had recorded the dying declarations. One of the important tests of reliability of dying declaration is that the person who recorded it, must be satisfied that the deceased was in a fit state of mind. On perusal of the evidence of Doctors, Executive Magistrate and the Police Officer, there is no manner of doubt that they were satisfied that the deceased was in a fit state of mind to make statement. The deceased was in a position to identify the appellant as her assailant and the version narrated by her is intrinsically sound and accords with probabilities. No part of dying declarations either material or otherwise is proved to be false by other evidence on record. We may observe that no enmity worth the name is suggested to any of the Doctors or to the Executive Magistrate or to Police Officer as to why they should implicate the present appellant in a serious charge of murder. The medical papers would show that the deceased had received serious burn injuries and it is obvious that she was in her expectation of death due to burns and, therefore, she had no reason to allow the real culprit to go scot free and implicate the appellant falsely in such a serious case. The evidence of witness Binduben read with complaint of the deceased filed with Binduben would indicate that there was enough motive on the part of the appellant in committing the crime in question because the appellant was suspecting that the deceased had illicit relations with one Govubha Bhikhubha regarding whom nothing has been elicited at all in cross-examination of prosecution witnesses. The contention that the deceased might have committed suicide or met with an accidental death, has no substance. The evidence of witness Binduben P.W.13 at Exh.32 indicates that she was inclined to send the deceased to Nari Sadan, but the deceased had spurned that suggestion because she was worried about her three young children. The evidence of witness Binduben shows that the deceased had great love and affection for her children and was worried about their well being. The defence has not brought on record anything which would establish that the deceased had tendency to commit suicide or that in past any attempt was made by the deceased to commit suicide. Under the circumstances, the contention that the deceased might have committed suicide, cannot be accepted. The dying declarations on record suggest that the deceased had not received burn injuries accidentally, but had received those injuries because she was set on fire by the appellant. Therefore, possibility of the deceased having received accidental burn injuries is also ruled out. The dying declarations

which are on record of the case are consistent with each other. While stating the law on the dying declarations, we have observed that dying declaration need not be corroborated by any evidence and conviction can be based on it, if it is found to be reliable and trustworthy. However, here we find that the dying declarations on record not only corroborate each other, but stand fortified by medical evidence on record. The contention that the appellant had sustained burn injuries which would indicate that he had tried to extinguish fire because of his love and affection towards the deceased and, therefore, he could not have been convicted for her murder, is devoid of merits. The evidence on record establishes that after setting the deceased on fire, the appellant had run away and had come to the place of incident only after neighbours had collected. The evidence of Dr. Hasmukh Devmurari P.W.7 at Exh.15 makes it manifest that the appellant had approached the Group Health Centre, Lalpur only on third day of the incident i.e. on August 16, 1991 for his burn injury and the doctor had found that right hand index finger was slightly burnt. The cross-examination of Dr. Devmurari would show that if a push is given with one finger to a burning person, such an injury can be sustained. In fact, if the appellant had made sincere efforts to extinguish fire because of his love and affection towards the deceased, he would not have received superficial injury only on one hand index finger, but would have sustained extensive burn injuries. Therefore, the contention that because of burn injury sustained by the appellant it should be held that it establishes his love and affection towards the deceased and he had not committed murder of his wife, cannot be accepted in view of reliable and cogent evidence adduced by the prosecution in the form of different dying declarations of the deceased.

10. On overall appreciation of the evidence, we hold that the prosecution has proved its case against the appellant beyond any shadow of doubt that he had committed murder of his wife on August 14, 1991 by pouring kerosene over her and setting her ablaze. In our view, no ground is made out by the learned counsel for the appellant to interfere with the conviction recorded by the learned Judge and the appeal is liable to be dismissed.

For the foregoing reasons, the appeal fails and is dismissed. Muddamal to be disposed of in terms of directions given by the learned Judge in the impugned judgment.

(J.M.Panchal,J.)

(D.P.Buch, J.)

(Patel)